visions of section 66 of the Contracts Act, 1950 relating to the restoration of the property to the original position on the discovery of a void contract as dealt with in *Maneka* v. *Lum Kum Chum (supra)* do not arise. There cannot be *restitutio in integrum* in this case.

For the above reasons the appeal is dismissed with costs. The deposit by the appellants is to be paid to the respondents to account for costs.

Appeal dismissed.

Solicitors: *Syarikat P.S. Moorthy, Morris Edgar & Clough Thuraisingham.*

PROVINCIAL INSURANCE CO. LTD. v. YEO CHEE SWEE

[F.C. (Wan Suleiman, Mohamed Azmi & Hashim Yeop A. Sani F.JJ.) February 21 & April 14, 1984]
[Kuala Lumpur – Federal Court Civil Appeal No. 209 of 1983]

Insurance – Exception in insurance policy – Motor-cycling – Construction

In this case the respondent was the administratrix of the estate of the deceased who had died in a road accident while riding a motor cycle. At the time of his death there was an insurance policy in favour of the deceased. The policy excluded "Death or disablement caused by or consequent upon participation in hunting, mountaineering, winter sports, racing of any kind, polo, football, motor-cycling or any form of diving in the sea". The Arbitrator in this case stated a case for the opinion of the High Court judge. The question was whether upon a true construction of the policy the word "motor-cycling" in the exception relates to the use of a motor-cycle for any purpose or only to motor cycling undertaken as part of some sporting activity. The learned trial judge held that the exception only applied where motor cycling was undertaken as part of some sporting activity. The appellants appealed.

Held, applying the *noscitur a sociis* maxim, "motor cycling" in the exception must be motor-cycling not undertaken in the ordinary sense but motor cycling in some form of sports or exhibition or competition.

Cases referred to:

(1) *Leong Luen Kiew & Anor* v. *New Zealand Insurance Co. Ltd.* [1939] M.L.J. 173.
(2) *Jason* v. *British Traders' Insurance Co. Ltd* [1969] 1 Lloyd's Rep. 281, 290.

FEDERAL COURT.

Wilfred Abraham for the appellant.
Dulip Singh for the respondent.

Cur. Adv. Vult.

Hashim Yeop A Sani F.J. (delivering the Judgment of the Court): This was a special case stated by the Arbitrator for the decision of the High Court judge under section 22 of the Arbitration Act 1950 (revised 1972). The facts are not in dispute. The claimant was the administratrix of the estate of the deceased who had died in a road accident while riding a motor-cycle. At the time of the accident there was in operation a Talisman policy No. T.2701802/5 in favour of the deceased. A compensation amounting to a sum of $50,000/- would be due to be paid under the policy if the death was within the meaning of the policy. The policy excluded death or disablement caused under circumstances described in seven exception clauses stated in the policy. The relevant exception in this case is Exception 6 which reads as follows:–

"Death or disablement caused by or consequent upon participation in hunting, mountaineering, winter sports, racing of any kind, polo, football, motor-cycling or any form of diving in the sea."

The question raised by the Arbitrator for the decision of the court was whether upon a true construction of the policy the word "motor-cycling" in Exception 6 of the policy relates to the use of motor-cycle for any purpose or only to motor-cyling undertaken as part of some sporting activity. Before the High Court judge and before this court counsel for the insurance company, Mr. Dulip Singh, advocated for the principle of interpretation that where the meaning of the words in the policy is reasonably clear it must be given full effect even though it operates harshly against the assured, relying on *MacGillivray* on Insurance Law 5th Edition pg. 704. He also advocated that Exception 6 should be divided into two limbs for the purpose of construction which approach was however rejected by the trial judge. Counsel for the claimant, Mr. Wilfred Abraham, on the other hand advocated for the adoption of the maxim *noscitur a sociis* for the true meaning of the word "motor-cycling". Thus according to counsel the meaning of the word "motor-cycling" has therefore to be ascertained by reference to the meaning of the words associated with it in the said Exception 6.

The Arbitrator on the other hand found that the genus to be derived from the activities described in Exception 6 is that they are "physical activities to which an unusual degree of risk of injury attaches."

In a claim of this nature it is for the claimant to show that the injury has caused the death in the manner provided by the policy. See *Leong Luen Kiew & Anor.* v. *The New Zealand Insurance Co. Ltd.*[1] A policy of insurance is basically subject to the same rules of construction as any other written contract. The words used in it must be given their plain, ordinary meaning but in the context of the policy looked at as a whole and subject to any special definitions contained in the policy – *Jason* v. *British Traders' Insurance Co. Ltd.*[2]

Although the grammatical sense is not the sole or primary method of construing a policy it does in this case give a useful guide as to the intention of the parties. We agree with the learned judge that the word "participation" is important in reading Exception 6. "Death or disablement caused by or consequent upon participation in football" is easily understood but not "death or disablement caused by football". Applying the maxim *noscitur a sociis* to Exception 6 "motor-cycling" referred to in the Exception must therefore be motor-cycling not undertaken in the ordinary sense but motor-cycling in some form of sports or exhibition or competition.

We accordingly dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.; Dulip Singh & Co.*

EUCO INTERNATIONAL SDN. BHD. v. P.F. CHEN

[F.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah F.JJ.) February 6 & April 13, 1984]
[Kuala Lumpur – Federal Court Civil Appeal No. 181 of 1982]

Contract – Guarantee – Whether plaintiff entitled to be fully indemnified in respect of guarantee for overdraft facilities – Resolution of company.

In this case the respondent, a consultant engineer and employee of the company was appointed a director of a company. As director he joined with the other directors to guarantee debts or other liabilities of the company and other connected companies by issuing letters of guarantee. In this case the guarantee was to the Malayan Banking Ltd. for granting overdraft facilities to the company. The overdraft debt was not paid and the bank obtained judgment against the respondent and some of the other directors. The respondent relied on the oral assurance of the shareholders of the companies and a resolution of the appellant company and claimed to be indemnified against all claims. The learned trial judge made a declaration that the respondent was entitled to be fully indemnified in respect of the guarantee. The appellant appealed. It was argued on appeal (a) that the learned Judge was wrong to conclude that there was sufficient evidence from which he could draw the inference that the appellant had agreed to indemnify the respondent on the guarantee either orally or in writing; (b) the learned Judge was wrong in holding that an assurance from a director of a company without more, when acted upon could bind the company; (c) the learned Judge drew a wrong conclusion that the resolution of the company was intended by the appellant to indemnify the respondent in respect of the guarantee issued by him.

Held, the learned trial judge was right in concluding that the respondent was entitled to be fully indemnified in respect of the guarantee.

Cases referred to:

(1) *Hely-Hutchinson* v. *Brayhead Ltd. & Anor.* [1967] 3 All E.R. 98, 102.
(2) *Freeman and Lockyer (a firm)* v. *Buckhurst Park Properties (Mangal) Ltd. & Anor.* [1964] 1 All E.R. 630.

FEDERAL COURT.

G.S. Nizar for the appellant.
Raja Abdul Aziz Addruse for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court): The appellant/1st defendant appealed against a declaration made by the learned Judge on June 23, 1982 that the respondent/plaintiff is entitled to be fully indemnified in respect of a guarantee for overdraft facilities. Out of four grounds of appeal one was abandoned. The first ground is that the learned Judge was wrong to conclude that there was sufficient evidence from which he could draw the inference that the appellant had agreed to indemnify the respondent on the guarantee either orally or in writing. The second ground is that the learned Judge was wrong to hold that an assurance from a director of the company, without more, when acted upon, could bind the company. Lastly, that the learned Judge drew the wrong conclusion that a document